

**ZONING BOARD OF APPEALS
MINUTES OF MEETING
JUNE 27, 2013**

Town of Bedford
Bedford Town Hall
Lower Level Conference Room

PRESENT: Angelo Colasante, Chair; Kenneth Gordon, Vice Chair; Brian Gildea, Clerk; Jeffrey Cohen; Jeffrey Dearing; Carol Amick

ABSENT: Stephen Henning; Todd Crowley

Mr. Colasante introduced himself and read the emergency evacuation notice. The Zoning Board of Appeals (ZBA) members and ZBA assistant introduced themselves.

PRESENTATION: Mr. Gildea read the notice of the meeting.

PETITION #030-13 – Verizon Wireless, for 216 Concord Road, seeks a Special Permit per Section 4.4.5 of the Zoning By-Law to modify wireless communication facility, per plans filed.

Earl Duval, of Duval and Klasnick, introduced himself and stated that he represented Verizon Wireless. After ensuring that the property owner had submitted a letter authorizing Mr. Duval to speak, Mr. Colasante asked him to explain the project.

Mr. Duval explained that Verizon currently had 12 panel antennas and one dish antenna on the tower at 216 Concord Road; they proposed to remove nine of the existing panel antennas and replace with nine new ones. The additional work, he added, involved removing the existing dish antenna and adding three radio heads and three DC surge protectors. He stated that all of this work was part of Verizon's intention to continue to upgrade its network to provide wireless internet to its customers. He concluded that all of the antennas would be replaced with the same size, color, and bracketing as what exists now.

Mr. Colasante asked whether the frequencies were comparable. Mr. Duval replied that they were. Mr. Gildea asked whether the power output would be the same. Mr. Duval said that the new radio heads actually made the power outage slightly less.

Mr. Colasante asked whether the new panels would weigh any more than the existing ones. Mr. Duval replied that the weight would be the same, and noted that there was a structural report included in the application indicating as much.

Mr. Cohen asked about changes to maintenance of the site. Mr. Duval replied that there would be no change; a Verizon technician would visit once per month, but most of the

technology was handled remotely, so there was usually no reason for technicians to visit the site.

Mr. Colasante opened the meeting to the public. With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Cohen said that he felt this application met the requirements of a Special Permit, in that it was not detrimental or injurious to the neighborhood and was in keeping with the intent and purpose of the By-Law. The other Board members agreed.

MOTION:

Mr. Gildea moved to grant Verizon Wireless, for 216 Concord Road, a Special Permit per Section 4.4.5 of the Zoning By-Law to modify wireless communication facility, per plans filed.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Gordon, Gildea, Cohen, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, the applicant could apply for a Building Permit at the Code Enforcement Department.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #032-13 – William Knox and Margot Fleischman, at 145 Page Road, seek a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to extend roofed farmer's porch within front yard setback.

Mr. Gordon explained that he was good friends with Mr. Knox and Ms. Fleischman and did not feel that in good conscience he could remain impartial to this application, and therefore, he recused himself.

William Knox introduced himself and explained that he and his wife were seeking to extend an existing porch area as part of a renovation project, replacing a smaller porch and deck unit with a non-enclosed farmer's porch on the southwest side of the house. He talked about the aesthetics of the porch and how it would relate visually to the rest of the house.

Mr. Cohen said the porch did not appear to extend farther than the current structure. Mr. Knox said it did not, and actually did not even come out as far as the existing structure, but the Code Enforcement Director still felt that it intensified the existing non-conformity.

The Board conversed with the applicant about the dimensions of the house and the lot as shown on the plot plan.

Ms. Amick asked whether the applicants intended to ever enclose the roofed porch and turn it into living space. Mr. Knox said they might in the future screen it in to protect from bugs but they did not intend to turn it into living space. Mr. Colasante noted that the Board often conditioned Special Permits to prohibit any enclosure.

Mr. Colasante opened the meeting to the public. With no comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Colasante stated that the two requirements of a Special Permit were that the project was in keeping with the intent and purpose of the By-Law and was not injurious or detrimental to the neighborhood. He said that he felt this project met those requirements, especially since the porch would not be extending any farther into the setback. The other members agreed.

Mr. Colasante asked the Board members whether they wanted to consider making a condition of the Special Permit prohibiting any enclosure of the porch. Mr. Cohen said he was comfortable with not making such a condition for this project. Mr. Dearing agreed, noting that the project was such a minor change that it hardly mattered. Mr. Gildea added that the porch wasn't moving any farther into the existing setback anyway. Ms. Amick agreed.

MOTION:

Mr. Gildea moved to grant to William Knox and Margot Fleischman, at 145 Page Road, a Special Permit per Sections 7.1.2 and 7.1.4 of the Zoning By-Law to extend roofed farmer's porch within front yard setback, as substantially shown on Exhibits A – G.

Mr. Dearing seconded the motion.

Voting in favor: Colasante, Gildea, Cohen, Dearing, and Amick

Voting against: None

Abstained: None

Recused: Gordon

The motion carried unanimously, 5-0-0.

Mr. Colasante explained that the Board had 14 days to write a decision, after which time there was a 20-day appeal period. The applicant was then responsible for getting the decision recorded at the Registry of Deeds. Once the decision was recorded, the applicant could apply for a Building Permit at the Code Enforcement Department.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #033-13 – Pamela Brown, Esq., for 12 Anthony Road, seeks a modification to Special Permit #028-13 to demolish and rebuild existing house.

Pamela Brown, Esq., the attorney for the project at 12 Anthony Road, and Jack Mara, the project manager, greeted the Board. Ms. Brown explained that this project had appeared before the ZBA a month before. She said that, at that original hearing, the application focused on the belief that the project would only involve adding a second floor to an existing house, as they believed the foundation would hold the second story; however, a structural engineering report has since shown otherwise, and they will now need to take the building down to the foundation. She stressed that the final product would not change at all.

Ms. Brown stated that Mr. Mara has been in touch with the neighbors and has informed them of the change, and he stressed to them that the construction noise and neighborhood impact would not change in magnitude, only in duration. She said that the Special Permit relief has not changed, and the end product of this project will meet the requirements of a Special Permit, in that it will not be injurious or detrimental to the neighborhood and will be in keeping with the intent and purpose of the By-Law.

Mr. Colasante opened the hearing to the public.

Mr. Colasante read into the record an email from Dianne Grattan, of 10 Anthony Road, dated June 25, 2013.

In response to Ms. Grattan's comments, Ms. Brown pointed out that nothing would be occurring at this property that would not have already, so there would still be no blasting.

Ms. Amick asked whether Mr. Mara had planned to take photographs inside Ms. Grattan's home. Mr. Mara said that it hadn't occurred to him to do that because there would be so little vibrations, but he added that he would be happy to do that.

Mr. Colasante referred to items #2 and #3 of Ms. Grattan's letter, which read:

2. Now with the proposed changes, cementing equipment, blasting, and other heavy machinery will be used, my worry now includes potential damage to the interior of my house. I suggest that we also have a "before" record to see if the construction work being done so close to my home will produce cracked walls, ceilings or any other

damages. How do you suggest we deal with dirt and debris that enters my home?

3. Does the Town of Bedford require a certificate of insurance from the developer or construction company? Can I see a copy and can we add "Dianne Grattan owner of abutting property" as additional insured on that policy?

Mr. Mara said that the general contractor and every subcontractor on the project would need to provide proof of insurance as part of obtaining permits from the Code Enforcement Department. Mr. Gordon said that he would be hesitant to force any contractor to take photographs of a neighbor's home or get involved with a contractor's insurance policies. The other Board members agreed.

Ms. Amick said that it appeared that the property line was 7'2" from Ms. Grattan's property line, and she asked how far the house at 12 Anthony Road was from that line. Ms. Brown said it was approximately 14 feet away from the line, so there was over 20 feet between the two houses.

In response to Ms. Grattan's comment about a schedule of work, Mr. Mara said he hasn't created the schedule of work yet but he would be happy to share it with Ms. Grattan when he does.

There was discussion about item #5 of Ms. Grattan's email, which read:

5. At the last meeting in April it was decided that a 4' high barrier wall would be put up to separate the properties during construction, how effective would that wall be with major demolition, fall out debris, and field personnel so close?

Mr. Colasante said his recollection was that the agreement was for a temporary construction fence, the purpose of which was to mark the property line so workers would know not to cross it. Ms. Brown said that was correct.

Ruth Bragg, of 51 Hancock Street, said she thought it should go into the public record that on May 25, when the original hearing was held, the neighbors were assured that the house would not be torn down and that the foundation was solid enough to sustain a second floor. She noted that she was very happy with the other construction in the neighborhood, as she felt it was a beautiful addition to the area, so she was not anti-construction, but she was concerned that only a month later, such a different enterprise was proposed. Mr. Colasante said that was a good point, and the decision to hold this meeting was made because of the neighborhood response to the first hearing and because it had been the Board's understanding that the existing house would remain.

Ms. Bragg said that the entire area was built near granite edge, so any blasting would cause vibrations. Mr. Colasante said it sounded to him that it was unlikely that any blasting would take place, but he was certain that if any blasting *were* to occur, the proper procedures would be followed and every precaution would be taken.

Ms. Amick said that she was confident that the applicants truly did believe at the first meeting that the existing foundation would support the addition, but she was still disappointed that a structural engineer hadn't performed a survey of the house before the original hearing.

With no further comments or questions from those in attendance, Mr. Colasante closed the public hearing.

DELIBERATIONS:

Mr. Colasante said that he was comfortable that the project was before and still remains in keeping with the intent and purpose of the neighborhood and was not injurious or detrimental to the neighborhood. He said he believed that Mr. Mara would do everything in his power to make the project as harmonious with the neighborhood as possible.

Mr. Gordon said that Mr. Mara came to the Board of his own volition, and he should be commended for moving through the process the right way. He said that he did not see this new project as being any more injurious than the first one, as it was the same basic plan, done a different way. Mr. Gildea agreed, noting that the only intensification was removing the superstructure, but he didn't consider that so much more of an intensification that he would not approve it. Mr. Cohen agreed as well, and stated that the removal of the superstructure would probably only take a day or two and then the project would proceed as normally as originally planned.

Mr. Gildea asked whether the Board wanted to consider any conditions for the Special Permit, such as a condition that no blasting could occur on the site. Mr. Dearing said he wasn't sure that was necessary, as the process one has to go through in the State of Massachusetts to blast is extremely onerous, and he imagined that blasting would be a last resort anyway.

Ms. Amick said she would like to see the applicants do as much as they could to ensure that Ms. Grattan was comfortable and was burdened as little as possible throughout the entire process. She noted that if there were going to be work done with a jackhammer, for example, she would hope that someone would contact Ms. Grattan to let her know. Mr. Mara assured the Board that he would be in contact with Ms. Grattan throughout the entirety of the project.

Mr. Colasante called for a motion.

MOTION:

Mr. Gildea moved to grant a modification to Special Permit #028-13 to raze the existing structure at 12 Anthony Road and reuse and reinforce the foundation.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Gordon, Gildea, Cohen, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

Mr. Colasante stated that the Board had 14 days to write the decision.

There was discussion about whether there would be an appeal period for a modification to a Special Permit. Mr. Cohen said the Board had never in the past reset the clock with a new appeal period for a modification. Mr. Dearing stated that he has appeared before Zoning Boards in a professional capacity for modifications, and agreed that a new appeal period had never been put in place for those. Mr. Colasante said that there was therefore no appeal period and the modification decision would be attached to the original Special Permit decision.

The applicants thanked the Board members for their time.

PRESENTATION: Mr. Gildea read the notice of the hearing.

PETITION #031-13 – New Cingular Wireless LLC, for 274 North Road, seeks a Special Permit per Sections 4.4.5 and 14.6 of the Zoning By-Law to construct a 125' monopole tower with associated equipment and access road, and a Variance per Section 4.4.5.2 of the Zoning By-Law to allow tower within allowable setback for nearest residential property line.

Michael Dolan, of Brown Rudnick LLP, introduced himself as the representative for AT&T Wireless. He explained that AT&T proposed a 125' monopole tower with 12 panel antennas at the back of Mr. Rosario Ferrante's property at 274 North Road. He stated that the Bedford Zoning By-Law required a Special Permit for any wireless communication facility use, so he was before the Board requesting a Special Permit for the installation itself and, in addition to the Special Permit, a Variance from Section 4.4.5.2 of the By-Law to allow the tower to be placed closer than the minimum setback requirement, which in a residential district is the height of the tower itself.

There was discussion of the Zoning By-Law and whether the Board had the authority to grant a Variance for setback relief for a cellular tower. Mr. Colasante said he believed the By-Law gave the Board enough flexibility to at least allow the petitioner to move forward tonight.

At this time, Mr. Dolan introduced Amjet Md, the Radio Frequency (RF) engineer for the project, and introduced Larry Morgan, the site acquisitions specialist.

Mr. Md said that the purpose of choosing this site was to allow more coverage along Route 4 (North Road). He showed RF maps that displayed the areas in this vicinity of Bedford that most need coverage. He showed a map of the existing conditions and a map showing the proposed conditions if this tower were installed, and stressed that the coverage would be vastly improved with this installation.

Mr. Gildea pointed out that the Veterans Affairs (VA) Hospital was located in the center of the coverage map, and that area had a water tower; he asked why the applicants couldn't attach to that instead. Mr. Dolan said that an RF study was done for the VA property and it was determined that the coverage from there would not be strong enough to cover the area that AT&T was looking to cover. However, it was later determined that the study was performed using the Pine Hill water tower, not the VA water tower.

Mr. Dearing said he wondered whether there was another telecommunications facility in the area that could be used instead.

Mr. Colasante asked whether the tower at 216 Concord Road would be feasible to provide this coverage. Mr. Dolan said that tower was about two miles away and would not provide adequate coverage. There was discussion about other possible sites that could be used. Mr. Morgan said that, as a site acquisition specialist, his job was always to try first to find an existing site on which to co-locate, but in this instance there were no such sites. He noted that there was only one non-residential lot in this entire search ring – the Zwicker property – and that was not nearly big enough to provide such a facility.

Mr. Colasante asked whether anyone could speak to the actual structure and building of the tower. Mr. Dolan introduced engineer Eric Pearson, who explained that, in the unlikely event that the tower fell, it was designed to fall in on itself. He said that its fall radius would be cut in half and therefore would not fall outside the radius of the property line. He also noted that following the recent devastating tornados in the mid-west, monopole cell towers were one of only two types of structures left standing after 140-mph+ winds. He stated further that the only documented instance where a cell tower had collapsed was due to a design error.

Mr. Colasante asked about the site maintenance. Mr. Dolan said that, after the initial installation, the tower was typically checked for maintenance once every month. He noted that there would be a backup generator at the facility that would be cycled on twice per month, but it would make very little noise and would give off no odor. Mr. Cohen questioned those assertions, noting that the generator data in the package was for a diesel generator, which are typically noisy and exhaust to the air.

Mr. Colasante said that the application showed maps of coverage of six properties; he asked whether those were all the properties AT&T had considered. Mr. Morgan said that was correct. He commented that the company kept coming back to Mr. Ferrante's property because it was quite literally right in the center of the coverage ring that they were hoping to fill.

Mr. Cohen asked whether there was a “Plan B” or an alternative that could provide adequate coverage. Mr. Morgan (not sure?) said they did not have a “Plan-B,” Mr. Dearing asked whether it was a possibility to overlap coverage rings, by placing antennas on multiple existing locations. Mr. Md said it was a bit too expensive for AT&T to do that. Mr. Dearing asked whether it was technically an option. Mr. Morgan said that the water towers were not tall enough to achieve the goal to which Mr. Dearing was referring.

Ms. Amick said that a similar tower was proposed back in 2009, and objections were raised from the Massachusetts Historical Commission. She asked whether AT&T was part of that proposal or had knowledge of it. Mr. Dolan said that he was not aware of it, and AT&T was not part of that proposal. He noted that AT&T had recently applied to the State Historic Preservation Office for their comments on this facility, and had not yet heard back. Mr. Cohen said it would be premature for the Board to rule on anything until it heard that feedback. He said that his understanding was that these types of facilities were difficult to deny unless they were a public safety hazard or unless a town’s natural or historic resources were being infringed upon. Mr. Dolan said that was correct, but noted that the 70-foot tree canopy would reduce the tower’s visibility and greatly lessen any impact on the area.

Mr. Colasante opened the hearing to the public.

Donald Corey, of 2 Page Road, said he was there as a resident and as the Chair of the Historic Preservation Commission (HPC). He said that this proposal was in direct opposition to the Town’s By-Laws and historic guidelines. He noted that this site was very close to the historic Job Lane House and that North Road was the oldest settled road in Bedford, having a great many old homes. Mr. Corey requested that this proposal be denied and force AT&T to explore other possibilities outside the historic North Road corridor, none of which would have any historic impact. He said that Mr. Ferrante had shopped his property around to various telecommunications companies for years, including in 2009 when a proposal was made and then withdrawn. He said that if the Board members didn’t want to deny the project based on neighborhood concerns, they could at the very least request that the applicants withdraw the application until such time as the applicants may exhaust other options and prove that this facility was somehow in keeping with the prerogatives set forth by the Massachusetts Historical Commission, the Bedford Historic Preservation Commission, and the Bedford Zoning By-Laws.

Mr. Dolan commented that the options mentioned by Mr. Corey would not meet AT&T’s coverage needs, and the historical concerns will be addressed by the Massachusetts Historical Commission in the near future. Mr. Cohen said that it would be helpful if the applicants provided documented proof, per the Zoning By-Law, stating why those other sites do not work. Mr. Gordon said he would like to see a letter written by an engineer that specifically stated why the other sites were not viable.

There was further discussion about the RF coverage maps and how they were created.

Norman Sutherland, of 280 North Road, said he was the direct abutter. He said this was a residential neighborhood where he had lived for over 40 years, and Mr. Ferrante had not been a good neighbor, having consistently used the property as a commercial construction site. He said that he has talked about the situation to Code Enforcement Director Christopher Laskey, who has fined Mr. Ferrante on numerous occasions. Mr. Sutherland noted that this tower was just another commercial venture for Mr. Ferrante, but it will be extremely unpleasant for the other neighbors to see every day. He said this was not only a residential zone but, as Mr. Corey mentioned, a historic area, and the thought of such a tower at the property upset him. He said that this tower will only exacerbate the existing problems at the property, and it also detracted a great deal from property values.

Mr. Sutherland added that he worried about such a tall tower being a lightning rod. Mr. Pearson talked about the grounding of the tower to ensure that the lightning energy was dissipated and kept within a confined perimeter.

Mr. Sutherland asked whether AT&T could add to the height of an existing structure, such as the water tower, if that structure was not high enough to meet the company's coverage needs. Mr. Md replied that it would still not meet the necessary coverage. In addition, Mr. Pearson responded that the water tower was not designed to provide such support.

Mr. Corey suggested that a consultant be hired, either by AT&T or by the Town, to ensure that the studies put forth in the application were correct. He said he found it difficult to believe that the only property in Town that can meet AT&T's current needs was this particular parcel.

John Perkins, of 286 North Road, said he wanted to make sure that this project met the requirements of a Special Permit and was not injurious or detrimental to the neighborhood. He showed photographs of the Job Lane House and the Ferrante property; he said that 70 feet of trees would not hide the tower in any way. He said that the horse farm and corral are beautiful and historic, and the addition of a cell tower would most definitely be detrimental. He said that his property abuts wetlands, and any kind of fuel leakage from the on-site generator would be very detrimental to the wetlands and any wildlife, so that should be considered. Furthermore, the applicants have stated that this tower would enhance coverage for AT&T customers; he said that he currently is an AT&T customer and has never had a problem with coverage. He noted that he was curious as to who first contacted whom – AT&T or Mr. Ferrante. He stated that this area had a lot of hiking trails and walkers, and he worried about anyone getting lost and coming across this facility.

Mr. Morgan noted that AT&T contacted Mr. Ferrante.

Sandra Perkins, of 286 North Road, noted that the neighbors have had to listen to a myriad of trucks and construction activity at Mr. Ferrante's property over the years, and this would only add even more. She said that, if other carriers were added to the tower,

that would add still more trucks and activity, adding more noise and chaos to what was once a beautiful residential neighborhood.

Mr. Gildea said that the photo simulations show a tower that is quite unattractive. He recalled that another tower in Bedford, on Shawsheen Road, was much thinner and was designed to blend in with the surrounding trees, and was even painted to help camouflage it. He said that this tower, by comparison, did not blend in at all.

Mr. Colasante suggested continuing the hearing so that AT&T can explore other site alternatives and prove to the Board, beyond any doubt, that there was no other location that this tower could go.

Mr. Gildea said he saw a few problems with the proposal. The first was that this was a residential area and the proposed monopole was so tall that it posed a safety hazard; the second was that this was a historic area, and he was concerned about the tower's effects on such a community. He said that there were possibly a great deal of alternatives to this site, but they have not been adequately explored.

Mr. Gordon agreed, but noted that the Board cannot always simply overrule the Federal laws and requirements regarding cell towers. He said that the Board cannot necessarily just deny a tower because it is unattractive. Mr. Gildea said that the Board could not deny a tower on that basis alone, but it could find problems with this particular site, especially if the applicants can't prove that there were no alternatives.

Mr. Cohen said the application was incomplete and did not include all of the items required under the By-Law, such as eight photo viewpoints of the site. He believed they had not proved that there were no other technically viable sites that would provide coverage in the subject area along North Road. He said he would have a very difficult time agreeing with the conditions set forth in the Bylaws that are necessary to waive the setback in a residential zone, and he didn't feel that this site met with the intent or purpose of the Town's Zoning By-Law. He added that he would also like to see a continuation so the applicants can fill in the missing gaps of the application.

Ms. Amick recommended that the Board not continue the hearing. She said that the By-Law specifically stated that the project must be in harmony with the intent of the By-Law and was not injurious or detrimental to the neighborhood in which it was to take place. She said that, on that basis alone, the Board must deny the application, and she felt that a denial would not be against Federal law; it would only send a message to AT&T that it must find a better site.

Mr. Cohen said that, in fairness to the applicant, he would like the applicant to prove that this was the only site that would work. He said he did not have enough information to render an informed decision and the Applicant would likely appeal a denial if the Board didn't allow them the opportunity to respond to the Board's questions/concerns.

Mr. Dolan said he would respectfully request a continuation, and if in the interim AT&T found that it could not justify the chosen site, it would withdraw the application.

Mr. Colasante said he thought that was the best way to proceed. Mr. Cohen agreed.

There was discussion about the best date for the second hearing. The applicants and ZBA members agreed that August 8 worked best.

Mr. Colasante called for a motion to continue the hearing.

MOTION:

Mr. Gildea moved to continue New Cingular Wireless LLC, for 274 North Road, seeking a Special Permit per Sections 4.4.5 and 14.6 of the Zoning By-Law to construct a 125' monopole tower with associated equipment and access road, and a Variance per Section 4.4.5.2 of the Zoning By-Law to allow tower within allowable setback for nearest residential property line to August 8, 2013 at 7:30 PM.

Mr. Cohen seconded the motion.

Voting in favor: Colasante, Gordon, Gildea, Cohen, and Dearing

Voting against: None

Abstained: None

The motion carried unanimously, 5-0-0.

MOTION:

Ms. Amick moved to adjourn the meeting.

Mr. Cohen seconded the motion.

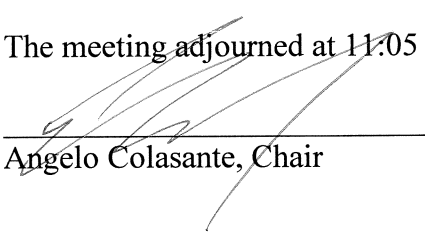
Voting in favor: Colasante, Gordon, Gildea, Cohen, Dearing, and Amick

Voting against: None

Abstained: None

The motion carried unanimously, 6-0-0.

The meeting adjourned at 11:05 PM.


Angelo Colasante, Chair

7-25-13
Date

Respectfully Submitted,

Scott Gould
ZBA Assistant